CLERK'S COPY.

CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 743

FRANK O. LOWDEN, JAMES E. GORMAN AND JOSEPH B. FLEMING, AS TRUSTEES OF THE ESTATE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

vs.

NORTHWESTERN NATIONAL BANK AND TRUST COMPANY OF MINNEAPOLIS, MINNESOTA, FORMERLY THE NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, MINNESOTA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED FEBRUARY 5, 1936.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1936.

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

NOVEMBER TERM, A. D. 1935

No. 10,390

FRANK O. LOWDEN, JAMES E. GORMAN and JOSEPH B. FLEMING, as Trustees of the Estate of the Chicago, Rock Island and Pacific Railway Company, Appellants,

vs.

NORTHWESTERN NATIONAL BANK AND TRUST COMPANY OF MINNEAPOLIS, MINNESOTA, Formerly the Northwestern National Bank of Minneapolis, Minnesota, Appellee

Appeal from the District Court of the United States for the District of Minnesota

Certificate of Questions– Filed Jan. 24, 1936

STATEMENT OF CASE

The United States Circuit Court of Appeals for the Eighth Circuit certifies that the record on an appeal in the above case now pending discloses the following:

The Chicago, Rock Island and Pacific Railway Company is a railroad corporation organized under the laws of Illinois and Iowa, with its principal place of business in Chicago. On June 7, 1933, at 9:55 o'clock A. M., the railroad, desiring to effect a plan of reorganization pursuant to section 77 of the Bankruptcy Act as amended (11 U. S. C. § 205), filed with the United States District Court for the Northern District of Illinois, Eastern Division, its petition for reorganization under that section. The petition alleged that the railroad was unable to meet its debts as they matured. Upon the filing of the petition, a judge of the court wherein it was filed approved it as being properly filed under said section 77.

[fol. 2] At the time of the filing of the petition (9:55 A. M., June 7, 1933), the railroad had to its credit in a

checking account with the Northwestern National Bank and Trust Company of Minneapolis, a national bank, the sum of $36,908.72. At the close of business on that day, the amount to the credit of the railroad in said account was $45,362.94. The bank on June 7, 1933, owned $100,000.00 par value of First and Refunding Gold Bonds of the railroad. These bonds were not then due and would not by their terms become due until April 1, 1934, and there had been no default upon the bonds in the payment of either principal or interest.

On June 19, 1933, seven days after it received a copy of the order of the United States District Court for the District of Illinois approving the petition for reorganization filed by the railroad, the bank set off the $45,362.94 which was to the railroad's credit with it at the close of banking hours on the day the petition was filed, against the $100,000.00 of bonds of the railroad owned by the bank by charging the railroad's account with that amount and crediting the same upon the bonds.

In so doing, the bank relied upon section 68(a) of the Bankruptcy Act (11 U. S. C. § 108) which provides:

"In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid";

and upon paragraph (n) of section 77 which provides:

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

[fol. 3] The railroad protested the set-off and denied the right of the bank to make it. On June 23, 1933, the bank restored to the account of the railroad the sum of $5,611.32, making the net sum deducted from the account for the purposes of set-off $39,751.62. This restoration was made by the bank because on June 10, 1933, three days after the

filing of the petition for reorganization, the balance in the account of the railroad with the bank had been drawn down to $39,751.62 which was the lowest amount standing to the credit of the railroad on the books of the bank between the time of the filing of the petition for reorganization and the time the bank made the set-off. The set-off was made voluntarily by the bank and was not ordered, authorized, approved, or consented to by the court in which the petition for reorganization was filed.

After trustees were appointed for the railroad pursuant to section 77, they brought suit in the United States District Court for the District of Minnesota to recover the amount of the set-off. That court held that section 68(a), supra, was applicable to proceedings under section 77, and that the bank was therefore entitled to the set-off; but fixed the amount which the bank was entitled to set off at $36,908.72, being the amount on deposit at 9:55 A. M. June 7, 1933, when the petition for reorganization was filed.

It is further certified that the following questions of law arise from this record, are presented and are undetermined, and decision thereof is indispensable to a determination of the case. To the end that this court may properly discharge its duty, it desires the instruction of the Supreme Court thereon:

Questions Certified

Question 1. Does the right of set-off recognized by section 68(a) of the Bankruptcy Act apply to reorganization [fol. 4] proceedings under section 77 of that act?

Question 2. If the first question be answered in the affirmative, can a bank which owns the unmatured bonds of a railroad corporation set off a deposit account of the railroad with the bank against the bonds, upon the filing by the railroad of a petition for reorganization under section 77 of the Bankruptcy Act, alleging that the railroad is unable to meet its debts as they mature?

Question 3. If the first and second questions be answered in the affirmative, may the United States District Court, for the District of Minnesota, in the suit by the trustees of the railroad's estate to recover the amount deducted from the account of the railroad by the bank under the claimed right of set-off, recognize and establish as a proper set-off

by the bank one which was not made until after the filing of the petition for reorganization and which has never been ordered, authorized, approved, or consented to by the court in which that petition was filed and approved?

Archibald K. Gardner, United States Circuit Judge.
John B. Sanborn, United States Circuit Judge.
J. W. Woodrough, United States Circuit Judge.

[File endorsement omitted.]

[fol. 5] In United States Circuit Court of Appeals, Eighth Circuit

[Title omitted]

Order of Transmittal

Certain questions having arisen on the record in this cause, upon which this Court desires the instructions of the Supreme Court of the United States as provided by law, and a certificate of such questions having been prepared and duly signed. It is now here ordered by this Court that such certificate be filed and entered of record in this Court and that the original thereof be duly certified by the Clerk of this Court and that it be by him duly transmitted to the Supreme Court of the United States for its action thereon.

January 24, 1936.

[fol. 6] In United States Circuit Court of Appeals, Eighth Circuit

Clerk's Certificate

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing certificate in the case of Frank O. Lowden, et al., Appellants, vs. Northwestern National Bank and Trust Company of Minneapolis, Minnesota, etc., No. 10390, was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 30th day of January, A. D. 1936.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal United States Circuit Court of Appeals, Eighth Circuit.)

Endorsed on cover: File No. 40,297. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 743. Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as Trustees of the Estate of the Chicago, Rock Island and Pacific Railway Company, vs. Northwestern National Bank and Trust Company of Minneapolis, Minnesota, Formerly the Northwestern National Bank of Minneapolis, Minnesota. Certificate. Filed February 5, 1936. Term No. 743, O. T., 1935.

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Supreme Court of the United States

OCTOBER TERM, 1935.

No. 743.

FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, as Trustees of the Estate of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

Appellants Below,

vs.

NORTHWESTERN NATIONAL BANK AND TRUST COMPANY OF MINNEAPOLIS, MINNESOTA, formerly THE NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, MINNESOTA,

Appellee Below.

NOTICE OF MOTION
AND
MOTION TO BRING UP ENTIRE RECORD AND CAUSE.

M. L. BELL,
DANIEL TAYLOR,
ALEXANDER E. HORN,
EDWARD S. STRINGER,
Counsel for Appellants Below.

Review Publishing Co., 141 E. Fifth St., St. Paul, Minn.

Supreme Court of the United States

OCTOBER TERM, 1935.

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Appellants Below,

vs.

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Appellee Below.

NOTICE OF MOTION.

TO MESSRS. CLAUDE G. KRAUSE AND GLENN S. STILES, COUNSEL FOR APPELLEE BELOW:

PLEASE TAKE NOTICE, That on the 17th day of February, 1936, or as soon thereafter as counsel can be heard, the within motion to bring up the entire record and cause will be submitted to the Supreme Court of the United States

in Washington, D. C. A copy of the motion to bring up the entire record and cause is served upon you herewith.

Respectfully,

M. L. BELL,
DANIEL TAYLOR,
ALEXANDER E. HORN,
EDWARD S. STRINGER,
Counsel for Appellants Below.

Due service of the within motion to bring up the entire record and cause, and notice thereof, is hereby admitted this ..... day of February, 1936, and consent is hereby given that said motion be submitted to the Supreme Court of the United States at said time.

.....

.....

Counsel for Appellee Below.

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 743.

FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, as Trustees of the Estate of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

Appellants Below,

vs.

NORTHWESTERN NATIONAL BANK AND TRUST COMPANY OF MINNEAPOLIS, MINNESOTA, formerly THE NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, MINNESOTA,

Appellee Below.

MOTION TO BRING UP ENTIRE RECORD AND CAUSE.

Now come Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, as Trustees of the Estate of The Chicago, Rock Island and Pacific Railway Company, appellants in this cause in the United States Circuit Court of Appeals for the Eighth Circuit, which is now pending in this Court on questions certified by said Circuit Court of Appeals, and move that this Court order that the entire record and cause be brought up and that it issue its writ of certiorari commanding the said Circuit Court of Appeals for the Eighth Circuit to certify and send to this Court a true and complete transcript of the record in this cause.

A certified transcript of this record, together with nine printed copies, has been lodged with the Clerk of this Court as an exhibit to this motion. An inspection thereof will show that this motion should be granted for the following reasons:

(1) A summary of the facts and the questions contained in the certificate on file is as follows:

The Chicago, Rock Island and Pacific Railway Company, a railroad corporation organized under the laws of Illinois and Iowa, desiring to effect a plan of reorganization pursuant to Section 77 of the Bankruptcy Act as amended (11 U. S. C. Section 205), on June 7, 1933, filed with the United States District Court for the Northern District of Illinois, Eastern Division, its petition for reorganization under that section. The petition alleged that the railroad was unable to meet its debts as they matured. Upon the filing of the petition, it was approved as properly filed under Section 77.

At the time of the filing of the petition, the railroad had to its credit in a checking account with the Northwestern National Bank and Trust Company of Minneapolis, a national bank, the sum of $36,908.72. Later deposits made the same day brought the amount up to $45,362.94 at the close of business. The bank on that day owned $100,000 par value of First and Refunding Gold Bonds of the railroad. These bonds were not then due and would not by their terms become due until April 1, 1934, and there had been no default upon the bonds in the payment of either principal or interest. On June 19, 1933, the bank set off $45,362.94 (the amount to the railroad's credit at the close of business on June 7, 1933,) against $100,000 of the bonds of the railroad owned by

the bank by charging the railroad's account with that amount and crediting the same upon the bonds. The railroad protested the set-off and denied the right of the bank to make it. Later, the bank restored to said account a portion of the amount deducted. The set-off was made voluntarily by the bank and was not ordered, authorized, approved, or consented to by the Court in which the petition for reorganization was filed. After trustees were appointed for the railroad pursuant to Section 77, they brought suit in the United States District Court for the District of Minnesota to recover the amount of the set-off.

The United States Circuit Court of Appeals certified to this Court the following questions:

> "Question 1. Does the right of set-off recognized by section 68 (a) of the Bankruptcy Act apply to reorganization proceedings under section 77 of that act?
>
> "Question 2. If the first question be answered in the affirmative, can a bank which owns the unmatured bonds of a railroad corporation set off a deposit account of the railroad with the bank against the bonds, upon the filing by the railroad of a petition for reorganization under section 77 of the Bankruptcy Act, alleging that the railroad is unable to meet its debts as they mature?
>
> "Question 3. If the first and second questions be answered in the affirmative, may the United States District Court, for the District of Minnesota, in the suit by the trustees of the railroad's estate to recover the amount deducted from the account of the railroad by the bank under the claimed right of set-off, recognize and establish as a proper set-off by the bank one which was not made until after the filing of the petition for reorganization and which has never been ordered, authorized, approved, or consented to by the court in which that petition was filed and approved."